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FEDERAL COMMUNICATIONS COMMISSION
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PR Docket No. 93-144

PP Docket No. 93-253

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Dated: March 1, 1996

TABLE OF CONTENTS

	Page No.
EXECUTIVE SUMMARY	i
INTRODUCTION	2
REPLY COMMENTS	2
I. The Industry Lacks Consensus on How to License the Lower 80 SMR and General Category Channels	2
II. The Comments Reveal that Auctioning and Geographic Licensing of the Lower 80 SMR and General Category Channels are Not in the Public Interest	5
III. Commenters Agree that Incumbents Rights are Paramount	7
IV. Commenters Agree that Greater Protections Must be Afforded to Incumbent SMRs and Non-SMRs Licensed on the Upper 200 SMR Channels	8
A. Comparable Facilities	9
B. Compensable Costs and Cost-Sharing	10
CONCLUSION	11

EXECUTIVE SUMMARY

Southern believes that the record to date in this proceeding is insufficient to justify adoption of the proposed rules, and that the Commission has not offered a reasoned basis for seeking to adopt the instant proposals. The proposals are not in the public interest in light of the disruption caused to incumbent licensees and the customers they serve. The uncertainties created by the auctioning of the upper 200 SMR channels suggest that this further rulemaking be, at a minimum, postponed until resolution of the upper 200 SMR channels has occurred. Moreover, the comments overwhelmingly oppose licensing of the lower 80 SMR and General Category channels on geographic basis through auctions. There is no industry consensus which supports the Commission's proposals. Even the so-called "industry solution" recommended by some commenters confirms that auctions should be avoided and are an inappropriate mechanism for licensing this spectrum.

Furthermore, Southern believes that the proposed "industry solution" offered by some SMRs is beyond the scope of this proceeding to the extent that it recommends market settlements, a concept more appropriately reserved for the upper 200 SMR channels where incumbent relocation is mandatory. Additionally, the "industry solution" introduced at this stage of the proceeding does not give parties sufficient opportunity to fully

discuss the issues raised, and should be the subject of another Further Notice of Proposed Rule Making. Accordingly, Southern submits that this rulemaking is premature and should not be adopted.

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
)
Amendment of Part 90 of the) PR Docket No. 93-144
Commission's Rules to)
Facilitate Future Development)
of SMR Systems in the 800 MHz)
Frequency Band)

and

Implementation Section 309(j))
of the Communications Act -) PP Docket No. 93-253
Competitive Bidding 800 MHz)
SMR)

To: The Commission

**REPLY COMMENTS OF
THE SOUTHERN COMPANY**

The Southern Company ("Southern"), through its undersigned counsel and pursuant to Section 1.415 of the Federal Communications Commission's ("Commission" or "FCC") rules, respectfully submits the following Reply Comments in the above-captioned Second Further Notice of Proposed Rule Making ("Second Notice").^{1/}

^{1/} In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR systems in the 800 MHz Frequency Band and Implementation of Section 309 (j) of the Communications Act -- Competitive Bidding,
(continued...)

INTRODUCTION

1. Southern has maintained an active role in this proceeding. As a fully viable Specialized Mobile Radio ("SMR") operator,^{2/} Southern is concerned that the proposals advanced in this rulemaking are not in the public interest and, if adopted, will disrupt the on-going business plans and operations of many SMR operators. Several other commenters have agreed with Southern and accordingly, adoption of the proposed rules is premature. Moreover, Southern believes that other proposals advanced by other parties for licensing General Category and the lower 80 SMR spectrum confirm that auctions of this fully encumbered spectrum are inappropriate.

REPLY COMMENTS

I. The Industry Lacks Consensus on How to Re-License the Lower 80 SMR and General Category Channels

2. Upon review of the Comments filed throughout this stage (as well as previous stages) of this proceeding, one

^{1/}(...continued)

PR Docket No. 93-144 and PP Docket 93-253, Second Further Notice of Proposed Rule Making, released December 15, 1995, 61 Fed. Reg. 6212 (1996), Order extending the Comment date to February 15, 1996 and Reply Comment date to March 1, 1996, adopted January 16, 1996.

^{2/} Southern launched commercial operation of its wide-area, digital-enhanced SMR system in January 1996.

thing is certain -- there is a lack of consensus as to how the 800 MHz SMR spectrum in general and the lower 80 and General Category channels in particular, should be re-licensed. Presumably, the Commission should either proceed to reach a true consensus, or establish a clear record as to what the public interest requires. The record, however, only supports abandoning this rulemaking in light the overwhelming opposition to the Commission's proposals.

3. Southern has had an opportunity to analyze the so-called "industry solution" espoused in the Comments of SMR WON and other privileged parties who had a "meeting of the minds" regarding the licensing of the lower 80 SMR and General Category channels. Southern believes that the solution espoused by SMR WON et. al. is not representative of an industry consensus. Clearly, only a handful of parties were present at these meetings.^{3/} These few

^{3/} Southern was not invited to these meetings. We understand that certain of the meetings were called by the FCC and that other meetings simply involved certain industry entities with no FCC presence. Based on the Comments that were filed, it appears that only Nextel Communications, SMR WON, American Mobile Telecommunications Association, Inc. ("AMTA") and Pittencrief Communications, Inc. were present at these meetings. Southern was excluded although it clearly expressed interest in attending these meetings with both the FCC staff and AMTA officials.

Southern also questions the propriety of these meetings where they were called by the FCC, and no notice was given to the public, or to obviously affected parties that had indicated a desire to attend industry consensus-building meetings and had participated in the proceeding.

representatives cannot and do not speak for the entire SMR industry. Neither do they speak for the non-SMR licensees occupying the General Category channels who also are affected by this rulemaking proceeding. Indeed, the Comments indicate that other SMRs and non-SMRs alike either were not privy to the "industry solution" or are not in agreement with such a plan.^{4/} Accordingly, the Commission cannot logically conclude that the entire SMR and non-SMR industry affected by this proceeding is in agreement with the so-called "industry solution."

4. Furthermore, Southern believes that the so-called "industry solution" is beyond the scope of this proceeding in that it involves relocation negotiations ("market settlements") which are not the subject of this Second Notice. Since mandatory relocations are being proposed for incumbent SMR in this spectrum, "market settlement" discussions are perhaps more appropriate with regard to negotiations between incumbents and EA license winners in the upper 200 SMR band. Nevertheless, a general outline of an "industry solution" in the Comments only cannot be

^{4/} SMRs whose Comments lack a discussion on the "industry solution" include Southern, Centennial Telecommunications, Inc. ("CTI"), Digital Radio, L.P., Fresno Mobile Radio, Inc. et. al., SMR Systems, Inc., Industrial Communications & Electronics, Inc. ("ICE") and GP and Partners. None of the non-SMRs commenting in this proceeding addressed the "industry solution" either.

adequately addressed only in one phase of a rulemaking -- Reply Comments. Therefore, if this "industry solution" is to be considered at all, it should be the subject of a Further Notice of Proposed Rule Making.

II. The Comments Reveal that Auctioning and Geographic Licensing of the Lower 80 SMR and General Category Channels are Not in the Public Interest

5. Southern continues to believe that the Commission has offered no rational basis for its proposals, and the public interest is not served by their adoption. Additionally, Southern believes its desire to eliminate site-specific licensing cannot run afoul of public interest objectives. Neither is its auction authority unfettered. The Commission must, therefore, carefully weigh these competing interests in light of the public interest objectives.

6. Moreover, the majority of Comments filed oppose auctioning of the lower 80 and General Category frequencies.^{5/} Even the "industry solution" argues for a

^{5/} Comments of Southern at 8-14, Comments of Entergy Services, Inc. ("Entergy") at 7-11, U.S. Sugar Corporation at 13, Comments of The City of Coral Gables, Florida at 3, 6-7, Keller Communications, Inc. at 2-3 ("Keller"), Personal Communications Industry Association ("PCIA") at 18 at 24 and Utilities Telecommunications Council ("UTC") at 2, 13. Even AMTA is not convinced that geographic licensing should be awarded through auctions. AMTA at 19.

mechanism that seeks to avoid the auction process entirely by permitting incumbent settlements which would eliminate mutually exclusive applications. These types of proposals actually support Southern's view that auctioning this spectrum is not in the public interest and should be avoided where possible.

7. Commenters agree that geographic licensing in the lower 80 SMR and General Category bands is not feasible given the unavailability of frequencies in these bands.^{6/} Certainly, the Commission should not be adamant about moving forward with geographic licensing and auctions for this spectrum regardless of the factual situations, and despite the adverse impact on incumbent licensees. Also, Southern urges the Commission to balance its desire to eliminate site-by-site licensing and its desire to generate revenues via auctions with the upheaval and license churning which will result if these proposals are adopted.

8. Indeed, many commenters provided specific examples of how geographic licensing and auctions of the lower 80 SMR

^{6/} Comments of Southern at 11-14, UTC at 13-14 and The City of Los Angeles Police Department ("LAPD") at 6. Southern recently received an 800 MHz Incumbent Report of the Atlanta EA prepared by the Industrial Telecommunications Association ("ITA"). The report confirms that in Southern's headquarters every 800 MHz channel is fully licensed.

and General Category channels would adversely affect their operations. Specifically, the public safety community confirmed its inability to provide necessary service to local and state communities without continued, uninterrupted use of its General Category channels.^{2/}

9. Furthermore, many commenters also expressed opposition to the reallocation of the General Category channels as SMR channels only, acknowledging that this argument may be more appropriately raised in a Petition for Reconsideration of the First Report and Order.

III. Commenters Agree that Incumbents Rights are Paramount

10. Virtually every commenting party agreed that both incumbent SMRs and non-SMRs rights are paramount and should be protected. First, the majority of commenters supported the Commission's proposal not to require mandatory relocation of incumbent SMRs, and asked that the same privilege be extended to non-SMRs operating on these

^{2/} Comments of LAPD passim, City of Gainesville passim, County of Charlotte Board of County Commissioners passim, The State of Florida, Division of Communications passim, and The County of San Bernardino, Department of Information Services passim.

channels.^{8/} Second, commenters agreed that should auctions be held for this spectrum, they should not be limited to small businesses.^{9/} Limiting the auctions to small businesses would foreclose many incumbents from participating in the auctions if they desire to retain their licenses. Third, Southern agrees with the commenters who argue that, at a minimum, incumbents operating on the lower 80 SMR and General Category channels should be grandfathered indefinitely with the ability to modify their systems within their 22 dBu interference contours.^{10/}

IV. Commenters Agree that Greater Protections Must be Afforded to Incumbent SMRs and Non-SMRs Licensed on the Upper 200 SMR Channels

11. Southern reiterates its opposition to mandatory relocation for SMRs licensed on the upper 200 SMR channels. Southern also maintains that incumbent SMRs and EA auction winners, in most instances, will be competing for the same

^{8/} Comments of AMTA at 28, UTC at 15, PCIA at 15-16, Entergy at 13-16, Duke Power Company at 12, Baltimore Gas & Electric at 3-7 ("BG&E"), LAPD at 8-9 and APCO at 6-9.

^{9/} Comments of Southern at 16, Nextel passim, Comments of The City of Coral Gables, Florida at 8-9, Fresno Mobile Radio at 28, PCIA at 17-19 and AMTA at 28.

^{10/} Comments of AMTA at 29, UTC at 15, PCIA at 15-16, Entergy at 13-16, Duke Power Company at 12, BG&E at 3-7, LAPD at 8-9 and APCO at 6-9.

customers.^{11/} In this regard, Southern supports the views of all the commenters who requested greater protection for incumbents (both SMRs and non-SMRs) licensed on the upper 200 SMR channels. Specifically, Southern supports the comments regarding the following issues:

A. Comparable Facilities

12. Southern agrees that the definition of "comparable facilities" should also encompass systems whose mobile units may communicate with more than one base station.^{12/}

Southern also believes that comparable facilities should include the same propagation characteristics as the existing system.^{13/} Southern agrees with Ericsson that the replaced system contain the same features and functionalities such as signaling capability, baud rate and access time.^{14/}

Finally, Southern agrees that the replacement facilities must maintain the same co-channel separation requirements as

^{11/} See also, Comments of CTI at 8.

^{12/} Comments of Nextel at 22.

^{13/} Comments of Digital Radio at 6 and Keller at 3.

^{14/} Comments of Ericsson Corporation at 2-4. See also, Comments of GP and Partners at 2.

incumbents currently have.^{15/} This will assure that incumbents' coverage is not diminished by relocation on spectrum which has been short-spaced.

B. Compensable Costs and Cost-Sharing

13. Southern agrees with the comments of ITA and SMR Systems, Inc. that during the relocation process it may be necessary to operate both old and new systems simultaneously until reliability of the new system is tested and confirmed.^{16/} Accordingly, costs associated with simultaneous operation of both systems should also be included in compensable costs and reimbursable in terms of the proposed cost-sharing plan. Southern agrees that compensable costs should include marketing and educating customers about the relocations, replacing customer equipment, loss of business, configuration of antennas and other returning costs.^{17/}

^{15/} Comments of Council of Independent Communications Suppliers ("CICS") at 4-5, ITA at 9-11, AMTA at 15 and Fresno Mobile Radio at 18.

^{16/} Comments of SMR Systems at 4-5, CICS at 3-4 and ITA at 9.

^{17/} See Comments of Digital Radio at 4 and AMTA at 12.

14. Additionally, Southern supports Fresno Mobile Radio recommendation that the EA auction winner be required to post a performance bond as evidence of financial qualification to relocate the incumbents and as evidence of good faith to relocate SMR incumbents and make them whole.^{18/}

CONCLUSION

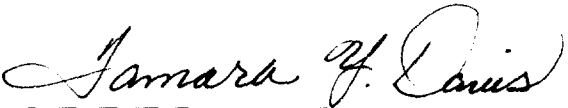
15. Southern concludes that a true consensus regarding the licensing of the lower 80 and General Category channels cannot be reached. In any event, the overwhelming majority of the comments reject the Commission's proposals. Accordingly, Southern believes that the Commission cannot find that the public interest is served by adopting the proposals espoused in this rulemaking. Due to the uncertainties created by the new licensing scheme in the upper 200 SMR channels, the ensuing Petitions for Reconsideration of the First Report and Order, and the overall opposition to this Second Notice, the Commission should, at a minimum, delay, if not totally abandon, the idea of geographic licensing and auctioning of the lower 80 SMR and General Category channels.

^{18/} Comments of Fresno Mobile Radio at 13-15. See also, Comments of Genessee Business Radio Systems, Inc. at 3 and AMTA at 13.

WHEREFORE THE PREMISES CONSIDERED, The Southern Company respectfully requests that the Commission act upon its Second Further Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

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